STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

TIMOTHY M. PARSLOW, MICHAEL F. PARSLOW, PATRICK J. PARSLOW, HAROLD W. PARSLOW, SR., and GRAPAR INC.,

Plaintiffs,

Case No.2011-5108-CZ

vs.

HAROLD W. PARSLOW, JR., JANET L. PARSLOW, HAROLD W. PARSLOW III, and GREEN AGE PRODUCTS & SERVICES, LLC,

Defendants.
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OPINION AND ORDER

Plaintiffs have filed a motion to compel discovery pursuant to the Court's August 15, 2014 Order. Defendants have filed a response and request that the motion be denied.

In addition, Plaintiff has filed a motion for reconsideration of the Court's October 21, 2014 Opinion and Order granting Defendants' motion for summary disposition of Plaintiff Harold W. Parslow, Sr.'s claims, denying Plaintiffs' motion for summary disposition as to its claims related to certain trade names and granting Defendants' summary disposition of Plaintiffs' claims related to the trade names.

The Court will address each of the motions in turn.

1) Plaintiffs' Motion to Compel.

In their motion, Plaintiffs request, as they have incessantly on an almost monthly basis, that the relevant time period for discovery be expanded to include materials related to events from November 2011 to the present. In support of their request, Plaintiffs rely on two affidavits

and the transcript of the August 1, 2014 hearing. However, in their brief Plaintiffs fail to cite to any of the exhibits and do not provide any basis for their requested relief. Rather, their motion contains various unsupported allegations and complaints. Consequently, Plaintiffs' motion is properly denied as improperly supported. Moreover, based on the Plaintiffs' repeated unsuccessful attempts to expand the scope of discovery in this matter, the Court is convinced that sanctions in the amount of $300.00 are properly assessed against Plaintiffs in favor of Defendants.

2) Plaintiffs' Motion for Reconsideration of the Court's October 21, 2014 Opinion and Order.

Standard of Review

Motions for reconsideration are provided for in MCR 2.119. A motion for reconsideration is addressed to the sound discretion of the trial court. *In re: Beglinger Trust,* 221 Mich App 273, 279; 561 NW2d 130 (1997). Such a motion is not to be granted unless filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue(s) ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). Unless the Court directs otherwise, there is no oral argument on the motion for reconsideration. MCR 2.119(F)(2).

Arguments and Analysis

In their motion, Plaintiffs contend that the Court erred in not addressing whether HPJR had the authority to transfer certain trade names and whether HPJR engaged in fraudulent conduct. With respect to Plaintiffs fraud allegations related to the trade names, the sole basis for fraud addressed in Plaintiffs' initial motion is their allegation that HPJR committed fraud by materially representing to the U.S. patent office that he was authorized to transfer the trade/service mark(s)." *See* Amended Brief to Plaintiffs' motion for partial summary disposition, at 5. However, the alleged misrepresentation was not made to one or more of the Plaintiffs and they did not provide the Court any authority that would allow a plaintiff to maintain a fraud claim based on misrepresentations made to a third party. Consequently, the Court did not err in refusing to address Plaintiffs' argument.

In their instant motion for reconsideration, Plaintiffs, for the first time, assert that HPJR committed fraud by "[misrepresenting] that the purpose of the spin-off was that the four Parslow brothers would be protected from a 2007 automobile industry bankruptcy, by leaving Grapar, Inc. as the automotive production machinery provider, and operating the Grapar, Inc. "Green Age: Division as a split-off or spin-off entity." *See* Plaintiffs' motion, at 6. In addition to failing to cite to any evidence that HPJR represented to his siblings that GAPS would be co-owned in the same manner as Grapar, it appears the only evidence attached to the motion evidencing such a representation is the testimony of Patrick Parslow in which he testified that HPJR "reassured him that if anything happens to Grapar, we as owners can still maintain [GAPS]." *See* Plaintiffs' Exhibit 7. However, Patrick Parslow's testimony conflicts with his prior deposition testimony in which he conceded that HPJR never told him that he was an owner of GAPS. *See* Exhibit A to Defendants' Objection to Plaintiffs' Reply. A party is bound by his deposition testimony and that testimony cannot be contradicted by affidavit in connection with a motion for summary

disposition. *Bailey v Schaaf*, 293 Mich App 611, 626; 810 NW2d 641 (2011). As Plaintiffs' sole evidence of the alleged misrepresentation is Patrick Parslow's impermissible affidavit, the Court is satisfied that Plaintiffs' contention is without merit.

The remainder of Plaintiffs' motion is based on their assertions that the Court erred by failing to address "corporate authorization." Specifically, Plaintiffs appear to contend that HPJR was required to provide his siblings notice that he intended to transfer, and ultimately did transfer, the trademark applications to himself, and that he was required to obtain their approval prior to transferring the applications. However, as discussed in the October 21, 2014 Opinion and Order, the Court is convinced that Plaintiffs acquiesced to HPJR's and GAPS' use of the trade names in connection with multiple contracts, many of which were ultimately subcontracted to Grapar. Accordingly, while Plaintiffs may not have formally approved the transfer, their actions amount to acquiescence. Consequently, Plaintiffs' position is without merit.

Conclusion

For the reasons set forth above, Plaintiffs' motion to compel discovery pursuant to the Court's August 15, 2014 Order is DENIED. In addition, sanctions in the amount of $300.00 are hereby assessed against Plaintiffs in favor of Defendants due to Plaintiffs' repeated unsuccessful attempts to expand the scope of discovery.

In addition, Plaintiffs' motion for reconsideration of the Court's October 21, 2014 Opinion and Order is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: December 1, 2014

JCF/sr

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